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9 and NORMAN ZADA
10

11 UNITED STATES DISTRICT COURT

12 CENTRAL DISTRICT OF CALIFORNIA

13 GIGANEWS, INC., a Texas corporation;
14 LIVEWIRE SERVICES, INC., a Nevada
15 corporation,

16 Plaintiffs,

17 v.

18 PERFECT 10, INC., a California
19 corporation, NORMAN ZADA, an
20 individual, and DOES 1-50, inclusive

21 Defendants.
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Case No.: 2:17-cv-05075-AB (JPR)

Before Honorable André Birotte, Jr.

**DEFENDANTS PERFECT 10, INC.'S
AND NORMAN ZADA'S ANSWER
TO PLAINTIFFS' FIRST AMENDED
COMPLAINT**

1 Defendants Perfect 10, Inc. and Norman Zada answer Plaintiffs' First
2 Amended Complaint (hereinafter the "FAC") as follows:

3 1. Defendants admit the allegations contained in paragraphs 3, 7, 8, 13,
4 14, 16, 17, 18, 28, 32, 33, 37, 45, and 61 of the FAC.

5 2. Defendants deny the allegations contained in paragraphs 4, 10, 11, 29,
6 30, 39, 41, 42, 54, 55, 56, 57, 58, 63, 64, 65, 66, 67, 68, 69 of the FAC in their
7 entirety.

8 3. Answering paragraph 1 of the FAC, Defendants admit the facts of said
9 paragraph, except that they deny that they ever considered the claims to be
10 "unmeritorious."

11 4. Answering paragraph 2 of the FAC, Defendants admit that Perfect 10,
12 Inc. has filed over two dozen suits for copyright infringement. Other than this
13 admission, Defendants deny each and every other allegation in said paragraph.

14 5. Answering paragraph 5 of the FAC, Defendants admit that the cases
15 referenced therein are accurately cited, but deny that those cases accurately describe
16 the USENET as it now exists. Defendants deny that Giganews only operates
17 "several Usenet servers." Defendants lack information and belief sufficient to admit
18 or deny all the other allegations in said paragraphs and therefore deny said
19 allegations.

20 6. Answering paragraph 6 of the FAC, Defendants lack information and
21 belief sufficient to admit or deny the allegations in said paragraphs and therefore
22 deny said allegations.

23 7. Answering paragraphs 9 and 12 of the FAC, Defendants lack
24 information and belief sufficient to admit or deny the allegations in said paragraphs
25 and therefore deny said allegations.

26 8. Answering paragraph 15 of the FAC, Defendants admit the facts of said
27 paragraph, except that they deny that they ever considered the claims to be
28 "unmeritorious," or that Dr. Zada "controlled" the litigation of the Related Case, as

1 that term is ambiguous.

2 9. Answering paragraph 19 of the FAC, Defendants admit the facts of said
3 paragraph, except that they deny that the fees awarded were “reasonable.” They
4 recognize that the court made such findings, but do not agree with those findings.

5 10. Answering paragraph 20 of the FAC, Defendants admit the amount of
6 the sums transferred and the dates of transfer and that Perfect 10’s General Ledger as
7 of December 31, 2014 reflects such transfers. Other than this admission, Defendants
8 deny each and every other allegation in said paragraph, including Plaintiffs’
9 characterization of such transfers.

10 11. Answering paragraph 21 of the FAC, Defendants admit that the
11 paragraph includes an accurate (albeit partial) transcript of Zada’s January 28, 2016
12 debtor’s examination. Other than this admission, Defendants deny each and every
13 other allegation in said paragraph.

14 12. Answering paragraph 22 of the FAC, Defendants admit that the
15 attorney’s fee award was issued on March 24, 2015. Other than this admission,
16 Defendants deny each and every other allegation in said paragraph.

17 13. Answering paragraph 23 of the FAC, Defendants admit that on March
18 27, 2015, \$454,002.05 was transferred from a Perfect 10, Inc. account to the Krause
19 Kalfayan Benink & Slavens, LLP Client Trust Account and admit at the time of the
20 transfer, a sanctions motion was pending against Perfect 10 and Perfect 10’s
21 attorneys. Other than this admission, Defendants deny each and every other
22 allegation in said paragraph.

23 14. Answering paragraph 24 of the FAC, Defendants admit the facts of said
24 paragraph, except that they deny that there were any “sham transactions for
25 inadequate consideration” and further deny that any car was transferred, or that
26 substantially all, rather than most, of Perfect 10’s remaining physical assets were
27 transferred.

28 15. Answering paragraph 25 of the FAC, Defendants admit that the

1 paragraph includes an accurate (albeit partial and out of context) transcript of Zada's
2 January 28, 2016 debtor's examination. Other than this admission, Defendants
3 deny each and every other allegation in said paragraph.

4 16. Answering paragraph 26 of the FAC, Defendants admit that \$70,000
5 was paid by Norman Zada for the Perfect 10, Inc. property. Other than this
6 admission, Defendants deny each and every other allegation in said paragraph.

7 17. Answering paragraph 27 of the FAC, Defendants admit that
8 approximately 11 days after the Court entered the attorney's fees award, Perfect 10
9 and Dr. Zada offered to settle the fee award by paying \$2 million in cash plus a first
10 trust deed of \$3.819 million on Dr. Zada's home, reserving the right to appeal the
11 judgment. Other than this admission, Defendants deny each and every other
12 allegation in said paragraph, including that Defendants did anything to "insulate"
13 Perfect 10, Inc.'s assets from the judgment, or that any aspect of the proffered
14 settlement was "illusory."

15 18. Answering paragraph 31 of the FAC, Defendants admit that portions of
16 the Perfect 10 website still operate. Other than this admission, Defendants deny
17 each and every other allegation in said paragraph.

18 19. Answering paragraph 34 of the FAC, Defendants admit that this
19 paragraph includes an accurate (albeit partial and out of context) transcript of a
20 deposition given by Poblete. Other than this admission, Defendants deny each and
21 every other allegation in said paragraph.

22 20. Answering paragraph 35 of the FAC, Defendants admit that some office
23 furniture and computers remain in the same room as when Perfect 10 owned them.
24 Other than this admission, Defendants deny each and every other allegation in said
25 paragraph.

26 **FIRST CAUSE OF ACTION**

27 21. Defendants repeat and incorporate herein, their responses to paragraph
28 1-20 above.

22. Answering paragraph 38 of the FAC, Defendants admit that between January 3, 2014 and November 20, 2014, \$1.75 million of cash Perfect 10 owed to Dr. Zada was paid back to Dr. Zada, and that most of Perfect 10, Inc.'s physical assets (Dr. Zada actually owned the 2009 Lexus, not Perfect 10, see Exhibit "A") were transferred from Perfect 10, Inc. to Dr. Zada in exchange for \$70,000. Other than this admission, Defendants deny each and every other allegation in said paragraph.

23. Answering paragraph 40 of the FAC, Defendants admit that the transfers were to an insider and that the non-cash transfers were most of Perfect 10, Inc's physical assets. Other than this admission, Defendants deny each and every other allegation in said paragraph.

24. Answering paragraph 43 of the FAC, Defendants lack information and belief sufficient to admit or deny the allegations in said paragraph (i.e, Plaintiffs' intentions) and therefore deny said allegations.

SECOND CAUSE OF ACTION

25. Defendants repeat and incorporate herein, their responses to paragraph 1-24 above.

26. Answering paragraph 46 of the FAC, Defendants admit the amounts of the transfers of monies owed to Dr. Zada from Perfect 10 to Dr. Zada and the dates. Other than this admission, Defendants deny each and every other allegation in said paragraph.

27. Answering paragraph 47 of the FAC, Defendants admit that Perfect 10's 2014 tax return reflected ordinary income of \$1,335,866; distributions of \$1,496,948 in Schedule M-2; a beginning-of-taxable-year "loan from shareholders" of \$266,863 in Schedule L; a deduction of \$645,980 in legal fees in Schedule F; and the accumulated adjustment account of -\$51,731,421 in Schedule M-2 at year end. Defendants lack information and belief sufficient to admit or deny all other allegations in said paragraph, including Plaintiffs' characterization of these figures,

1 and therefore deny said allegations..

2 28. Answering paragraph 48 of the FAC, Defendants admit that Perfect 10
3 made no profit in early 2015. Defendants deny each and every other allegation in
4 said paragraph.

5 29. Answering paragraph 49 of the FAC, Defendants admit that on March
6 27, 2015, \$454,002.05 was transferred from a Perfect 10, Inc. account to the Krause
7 Kalfayan Benink & Slavens, LLP Client Trust Account. Defendants also admit that
8 when the Court ruled that the sanctions order was moot, these same funds were
9 returned to Perfect 10. Other than these admissions, Defendants deny each and
10 every other allegation in said paragraph.

11 30. Answering paragraph 50 of the FAC, Defendants admit that most of
12 Perfect 10's physical assets were transferred to Dr. Zada in March 2015, which
13 included all of its magazines, videos, calendars, and t-shirts, some beds, a couch, a
14 desk, paper and office supplies, and several computers. (The car actually belonged
15 to Dr. Zada even though he mistakenly paid Perfect 10 \$30,000 for it.) Defendants
16 deny each and every other allegation in the paragraph.

17 31. Answering paragraph 51 of the FAC, Defendants admit Perfect 10's
18 2014 tax return includes a schedule that references the "Cost or Basis" of
19 photographic equipment, office furniture, and computer equipment in the amount of
20 \$555,464. That same schedule reflects prior depreciation of those same assets in the
21 amount of \$538,949. Defendants deny each and every other allegation in the
22 paragraph.

23 32. Answering paragraph 52 of the FAC, Defendants admit that Perfect
24 10's inventory of magazines that Dr. Zada purchased could have been as many as
25 4000 magazines, and that Perfect 10 at one time sold its magazines on its website for
26 as much as \$15/magazine and certain rare issues for more. Defendants deny each
27 and every other allegation in the paragraph, including Plaintiffs' analysis as to what
28 such magazines were worth, as Plaintiffs' analysis neglected that an employee would

1 be needed to be paid to process any resulting orders.

2 33. Answering paragraph 53 of the FAC, Defendants admit the facts of said
3 paragraph, except that they deny that “the transfers were without a reasonably
4 equivalent value in exchange.”

5 34. Answering paragraph 59 of the FAC, Defendants lack information and
6 belief sufficient to admit or deny the allegations in said paragraph (i.e, Plaintiffs’
7 intentions) and therefore deny said allegations.

8 **THIRD CAUSE OF ACTION**

9 35. Defendants repeat and incorporate herein, their responses to paragraph
10 1-34 above.

11 36. Answering paragraph 62 of the FAC, Defendants admit that some office
12 furniture and computers remain in the same room as when Perfect 10 owned them.
13 Defendants deny each and every other allegation in said paragraph.

14 37. Answering paragraph 70 of the FAC, Defendants lack information and
15 belief sufficient to admit or deny the allegations in said paragraph (i.e, Plaintiffs’
16 intentions) and therefore deny said allegations.

17 38. Answering paragraphs 36, 44 and 60, Defendants do not have the
18 ability to admit or deny said paragraphs, because they are legal boilerplate and
19 surplusage. To the extent that these paragraphs refer to allegations pled in the FAC,
20 Defendants deny or affirm them with reference to the denials and affirmations set
21 forth in this Answer.

22 **FIRST AFFIRMATIVE DEFENSE**

23 39. As a first, separate and affirmative defense to each and every cause of
24 action, Defendants allege that each and every cause of action fails to state a claim
25 upon which relief can be granted against the Defendants herein.

26 **SECOND AFFIRMATIVE DEFENSE**

27 40. As a second, separate and affirmative defense to each and every cause
28 of action, Defendants allege that each and every cause of action is implausible under

1 the standards set forth in *Bell Atlantic Corp. v. Twombly*, (2007) 550 U.S. 544, 556-
2 557 (2007); and *Ashcroft v. Iqbal*, 556 U.S. 662, 682 (2009).

3 THIRD AFFIRMATIVE DEFENSE

4 41. As a third, separate and affirmative defense to each and every cause of
5 action, Defendants allege that the FAC's third cause of action is improper because
6 the Court did not give Plaintiffs leave to amend to add a third cause of action.

7 FOURTH AFFIRMATIVE DEFENSE

8 42. As a fourth, separate and affirmative defense to each and every cause of
9 action, Defendants allege that each and every cause of action is barred under the
10 doctrine of collateral estoppel.

11 FIFTH AFFIRMATIVE DEFENSE

12 43. As a fifth, separate and affirmative defense, Defendants allege that by
13 virtue of the conduct of Plaintiffs, Plaintiffs have waived any and all claims they
14 may have had under the facts alleged in the Complaint.

15 SIXTH AFFIRMATIVE DEFENSE

16 44. As a sixth, separate and affirmative defense, Defendants allege that
17 Plaintiffs have not suffered any damage as a result of any actions taken by
18 Defendants or their agents and Plaintiffs are therefore barred from asserting any
19 cause of action against Defendants.

20 SEVENTH AFFIRMATIVE DEFENSE

21 45. As a seventh separate and affirmative defense, Defendants allege that at
22 all times herein relevant, without admitting the truth of any allegations, Defendants
23 are informed and believe and thereon avers that Plaintiffs seek excessive damages.

24 EIGHTH AFFIRMATIVE DEFENSE

25 46. As an eighth, separate and affirmative defense, Defendants allege that
26 at all times herein relevant, without admitting the truth of any allegations,
27 Defendants are informed and believe and thereon avers that Plaintiffs seek excessive
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1 prejudgment interest not authorized by law, including but not limited to interest
2 barred by Civil Code section 1504.

3 NINTH AFFIRMATIVE DEFENSE

4 47. As a ninth, separate and affirmative defense, Defendants allege that at
5 all times herein relevant, without admitting the truth of any allegations, Defendants
6 are informed and believe and thereon avers that Plaintiffs seek attorney's fees not
7 authorized by law.

8 TENTH AFFIRMATIVE DEFENSE

9 48. As a tenth, separate and affirmative defense, Defendants allege that at
10 all times herein relevant, without admitting the truth of any allegations, Defendants
11 are informed and believe and thereon avers that Plaintiffs seek punitive damages
12 which are excessive, not authorized by law, in violation of due process, and
13 unconstitutional.

14 ELEVENTH AFFIRMATIVE DEFENSE

15 49. As an eleventh, separate and affirmative defense, Defendants allege that
16 at all times herein relevant, Defendants are informed and believe and thereon aver
17 that Plaintiffs have failed to mitigate their damages and are therefore entitled to no
18 relief.

19 TWELFTH AFFIRMATIVE DEFENSE

20 50. As a twelfth separate and affirmative defense, Defendants allege that at
21 all times herein relevant, Plaintiffs' FAC, and each purported cause of action therein,
22 is barred, in whole or in part, because Plaintiffs lack standing to bring the alleged
23 claims.

24 THIRTEENTH AFFIRMATIVE DEFENSE

25 51. As a thirteenth, separate and affirmative defense, Defendants allege that
26 at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
27 therein, is barred, in whole or in part, because Plaintiffs are not the real party in
28 interest and has no right to seek redress for the alleged claims.

1 FOURTEENTH AFFIRMATIVE DEFENSE

2 52. As a fourteenth, separate and affirmative defense, Defendants allege
3 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
4 therein, is barred, in whole or in part, by the doctrine of estoppel.

5 FIFTEENTH AFFIRMATIVE DEFENSE

6 53. As a fifteenth, separate and affirmative defense, Defendants allege that
7 at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
8 therein, is barred, in whole or in part, by the doctrine of waiver.

9 SIXTEENTH AFFIRMATIVE DEFENSE

10 54. As a sixteenth, separate and affirmative defense, Defendants allege that
11 at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
12 therein, is barred, in whole or in part, by the doctrine of unclean hands.

13 SEVENTEENTH AFFIRMATIVE DEFENSE

14 55. As a seventeenth, separate and affirmative defense, Defendants allege
15 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
16 therein, is barred, in whole or in part, by Defendants' offer of payment.

17 EIGHTEENTH AFFIRMATIVE DEFENSE

18 56. As an eighteenth, separate and affirmative defense, Defendants allege
19 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
20 therein, is barred, in whole or in part, by the doctrine of laches.

21 NINETEENTH AFFIRMATIVE DEFENSE

22 57. As a nineteenth, separate and affirmative defense, Defendants allege
23 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
24 therein, is barred, in whole or in part, by Plaintiffs' lack of capacity.

25 TWENTIETH AFFIRMATIVE DEFENSE

26 58. As a twentieth, separate and affirmative defense, Defendants alleges
27 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
28 therein, is barred, in whole or in part, by the applicable statute of limitations,

1 including, but not limited to, Code of Civil Procedure §§ 3439.09(a), 3439.09(b),
2 3439.09(c), 338(d) and Civil Code § 3440.6.

3 TWENTY-FIRST AFFIRMATIVE DEFENSE

4 59. As a twenty-first separate and affirmative defense, Defendants allege
5 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
6 therein, is barred, because of Plaintiffs' comparative fault and negligence in any
7 damages suffered by Plaintiffs.

8 TWENTY-SECOND AFFIRMATIVE DEFENSE

9 60. As a twenty-second separate and affirmative defense, Defendants allege
10 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
11 therein, is barred, because the FAC is uncertain.

12 TWENTY-THIRD AFFIRMATIVE DEFENSE

13 61. As a twenty-third separate and affirmative defense, Defendants allege
14 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
15 therein, is barred, because any alleged transfers were proper and legal preferential
16 transfers.

17 TWENTY-FOURTH AFFIRMATIVE DEFENSE

18 62. As a twenty-fourth separate and affirmative defense, Defendants allege
19 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
20 therein, is barred, because any transferee of any of the alleged transfers was a good
21 faith taker for a reasonably equivalent value.

22 TWENTY-FIFTH AFFIRMATIVE DEFENSE

23 63. As a twenty-fifth separate and affirmative defense, Defendants allege
24 that at all times herein relevant, Plaintiffs' FAC, and each purported cause of action
25 therein, is barred, because the FAC seeks improper and illegal double recovery for
26 the same harm.

27 PRAYER

28 WHEREFORE, Defendants pray as follows:

1 1. That Plaintiffs take nothing by reason of their FAC, that judgment be
2 rendered in favor of Defendants;

3 2. That Defendants be awarded their costs of suit incurred in defense of
4 this action, including attorney's fees; and

5 3. For such other relief as the Court deems proper.

6 DATED: December 27, 2017

LAW OFFICES OF MATTHEW C. MICKELSON

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8 By: /s/ Matthew C. Mickelson

MATTHEW C. MICKELSON

9 Attorney for Defendants Perfect 10, Inc.
10 and NORMAN ZADA
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Defendants demand a jury trial.

DATED: December 27, 2017

LAW OFFICES OF MATTHEW C. MICKELSON

By: /s/ Matthew C. Mickelson

MATTHEW C. MICKELSON

Attorney for Defendants Perfect 10, Inc.
and NORMAN ZADA